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# Nadrah Ayuni Mohd Yusop v Rahman Lapodin (RHB Bank Bhd/RHB Islamic Bhd & Ors, garnishees)

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HIGH COURT (SANDAKAN) — CIVIL APPEAL NO SDK-11A-1–10 OF 2023
CELESTINA STUEL GALID J
15 MARCH 2024

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*Civil Procedure — Judgments and orders — Garnishee order — Appeal against decision of magistrates court in granting garnishee order absolute — Whether garnishees were in fact indebted to judgment debtor — Whether garnishees took part in proceedings — Whether magistrate considered O 49 r 1 of Rules of Court 2012 — Whether there was basis for magistrate to grant garnishee order absolute*

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The judgment creditor ('JC') had obtained a judgment against the judgment debtor ('JD') before the magistrates' court in the sum of RM62,248.25 and interest thereon. The JC thereafter applied for and obtained a garnishee order to show cause for the purpose of executing the said judgment. The JD, however, appealed against the decision of the magistrates court in granting the garnishee order absolute, wherein the second garnishee, Maybank Islamic Bhd, was ordered to pay to the JC the sums of RM8,635.97 and RM31,330.54 and the fifth garnishee, Ambank Islamic Bhd, the sum of RM22. The issue that arose for determination was what was the evidence before the magistrates court which showed that the second and fifth garnishees were in fact indebted to the JD as required under.

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**Held**, allowing the appeal in part:

(1) It was pertinent to first consider the applicable statutory provision that was O 49 r 1 of the Rules of Court 2012 ('ROC 2012'). It was unfortunate that the magistrate did not appear to have this provision in mind when he decided as he did. This was apparent as there was nothing in his grounds of judgment, where this fundamental issue was discussed. In addition, both the second and fifth garnishees neither opposed nor took part in the proceedings. The record of appeal did not include any affidavits filed by the second and fifth garnishees. Although under O 49 r 4 of the ROC 2012, if the garnishee did not attend or did not dispute the debt due or claimed to be due from him to the judgment debtor, the court may, subject to r 7, make an order absolute against the garnishee, this did not relieve the court from first determining whether there was a debt due to the judgment debtor from the garnishee under r 1. This was especially so in the present case when the JC did not even provide the

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grounds of his information and belief of the matters, he averred contrary to the requirement in Form 98 in the First Schedule of the ROC 2012 (see paras 4, 8 & 10–11).

(2) It was the JD, who in her affidavit in opposition, disclosed that the second garnishee had written to her to inform that her savings accounts in the sum of RM8,635.97 had been frozen. Indeed, the letter from the second garnishee did indicate that they had frozen the said account in compliance with the garnishee order to show cause. However, it should have immediately raised a red flag to the magistrate that there was no mention by the second garnishee in the said letter about the sum of RM31,330.54. This suggested that the second garnishee was not even sure that they were indebted to the JD in the said sum (para 12).

(3) The JC's said averments that the JD was named and sued in her personal capacity since the full name and identity card of the JD was stated as the defendant/JD and that as long as the account was under the JD's own name, it would be subject to the garnishee proceedings were without any basis as the JD was sued not in her personal capacity but as the proprietor of the trading business known as Ayuni Optometri & Ayuni Housing Group. In any event, it was not for the JC to rationalise as such as given the challenge by the JD, it was for the second garnishee to explain in particular as to why the account in the name of Legasi Bumiputera Enterprise was liable to be attached or why the second garnishee was said to be indebted to the JD in relation to that particular account. Even if the second and fifth garnishees did not take part in the proceedings, it would have been incumbent upon the JC to obtain the necessary information from them on this matter, given the dispute by the JD on this issue. This was not done (paras 14–16).

(4) There being no evidence before the magistrates court on the identity of the account holder in which the said sum of RM31,330.54 was kept, the requirement under O 49 r 1 of the ROC 2012 in as far as the said sum was concerned, was not fulfilled. It was also the same as regards the said sum of RM22 purportedly due to the JD from the fifth garnishee. This being the case, there was no basis for the magistrate to grant the garnishee order absolute in as far as the said sums of RM31,330.54 and RM22 were concerned (para 19).

(5) As regards to the contention that it was the duty of the JD to show that the money in the Legasi Bumiputera Enterprise account belonged to someone else, this ignored the fact that it was the JC who had the legal burden to persuade the court that there was: (a) a debt due to the judgment debtor from the garnishee; and (b) a debt which is 'accruing due' to the judgment debtor from the garnishee to justify the garnishment of the sum of money in question. If the JC had not discharged that burden, then there was nothing for the JD to rebut.

Here, the JD having challenged the propriety of attaching the Legasi Bumiputera Enterprise account, the burden was on the JC to show that it was justifiable to garnish the money in that account by showing that it was liable to be attached in any event. The JC failed to discharge that burden (para 28).

(6) The court had therefore, ordered that the: (a) decision of the magistrates court in granting the garnishee order absolute in respect of the said sums of RM31,330.54 and RM22 was set aside; (b) JC was to return the said sums of RM31,330.54 and RM22 to the second and fifth garnishees respectively within 14 days of this order; (c) second and fifth garnishees were to reinstate the said sums of RM31,330.54 and RM22 in the accounts from which the said sums were paid out within seven days from their receipts of the said sums; (d) JC pays the JD costs of this appeal subject to allocatur; and (e) parties were at liberty to apply for the purpose of giving effect of these orders (para 31).

**[Bahasa Malaysia summary**

Pemiutang penghakiman ('JC') telah memperoleh penghakiman terhadap penghutang penghakiman ('JD') di hadapan mahkamah majistret dengan jumlah RM62,248.25 dan faedah ke atasnya. JC kemudiannya memohon dan mendapatkan perintah garnishee untuk menunjukkan sebab bagi tujuan melaksanakan penghakiman tersebut. JD bagaimanapun merayu terhadap keputusan mahkamah majistret yang memberikan perintah garnishee secara mutlak, di mana garnishee kedua, Maybank Islamic Bhd, diperintahkan untuk membayar kepada JC sejumlah RM8,635.97 dan RM31,330.54 dan yang garnishee kelima, Ambank Islamic Bhd, jumlah RM22. Isu yang timbul untuk penentuan adalah apakah keterangan di hadapan Mahkamah Majistret yang menunjukkan bahawa garnishee kedua dan kelima sebenarnya berhutang dengan JD seperti yang dikehendaki di bawah A 49 k 1 daripada Kaedah-Kaedah Mahkamah 2012.

**Diputuskan**, membenarkan sebahagian rayuan:

(1) Ia adalah penting untuk terlebih dahulu mempertimbangkan peruntukan berkanun yang terpakai iaitu A 49 k 1 Kaedah-Kaedah Mahkamah 2012 ('KKM 2012'). Ia adalah kurang bernasib baik bahawa Majistret nampaknya tidak memikirkan peruntukan ini apabila dia memutuskan seperti yang dia lakukan. Ini jelas kerana tiada apa-apa dalam alasan penghakimannya, di mana isu asas ini dibincangkan. Di samping itu, kedua-dua garnishee kedua dan kelima tidak menentang mahupun mengambil bahagian dalam prosiding itu. Rekod rayuan tidak memasukkan sebarang afidavit yang difailkan oleh garnishee kedua dan kelima. Walaupun di bawah A 49 k 4 KKM 2012'2012, jika garnishee tidak hadir atau tidak mempertikaikan hutang yang perlu dibayar atau didakwa terhutang daripadanya kepada penghutang

penghakiman, mahkamah boleh, tertakluk kepada k 7, membuat perintah mutlak terhadap garnishee, ini tidak melepaskan mahkamah daripada terlebih dahulu menentukan sama ada terdapat hutang yang kena bayar oleh penghutang penghakiman daripada garnishee di bawah k 1. Hal ini terutamanya berlaku dalam kes semasa apabila JC tidak memberikan alasan maklumat dan dapatannya tentang perkara itu, dia membuat pernyataan bertentangan dengan keperluan dalam Borang 98 dalam Jadual Pertama KKM 2012' (lihat perenggan 4, 8 & 10–11).

(2) Ianya adalah JD, yang dalam afidavit menentangnya, mendedahkan bahawa garnishee kedua telah menulis kepadanya untuk memaklumkan bahawa akaun simpanannya berjumlah RM8,635.97 telah dibekukan. Malah, surat daripada garnishee kedua memang menunjukkan bahawa mereka telah membekukan akaun tersebut sebagai mematuhi perintah garnishee untuk menunjukkan sebab. Bagaimanapun, ia sepatutnya segera mendapat perhatian majistret bahawa tidak ada makluman oleh garnishee kedua dalam surat tersebut mengenai jumlah RM31,330.54. Ini menunjukkan bahawa garnishee kedua tidak pasti bahawa mereka berhutang dengan JD dalam jumlah tersebut (perenggan 12).

(3) Pernyataan JC tersebut bahawa JD dinamakan dan disaman atas kapasiti peribadinya kerana nama penuh dan kad pengenalan JD dinyatakan sebagai defendan/JD dan selagi akaun itu di bawah nama JD sendiri, ia akan tertakluk kepada prosiding garnishee adalah tanpa sebarang asas kerana JD telah disaman bukan atas kapasiti peribadinya tetapi sebagai pemilik perniagaan perdagangan yang dikenali sebagai Ayuni Optometri & Ayuni Housing Group. Walau apa pun, JC tidak sepatutnya merasionalkan perkara itu kerana disebabkan tentangan oleh JD, ia adalah untuk garnishee kedua menjelaskan secara khususnya mengapa akaun atas nama Legasi Bumiputera Enterprise boleh dilampirkan atau mengapa garnishee kedua dikatakan berhutang dengan JD berhubung dengan akaun tersebut. Walaupun garnishee kedua dan kelima tidak mengambil bahagian dalam prosiding itu, ia adalah menjadi tanggungjawab JC untuk mendapatkan maklumat yang diperlukan daripada mereka mengenai perkara ini, memandangkan terdapat pertikaian oleh JD mengenai isu ini. Ini tidak dilakukan (perenggan 14–16).

(4) Tiada keterangan di hadapan mahkamah majistret mengenai identiti pemegang akaun di mana jumlah RM31,330.54 tersebut disimpan, keperluan di bawah A 49 k 1 KKM 2012 setakat jumlah tersebut, tidak dipenuhi. Ia juga sama dengan jumlah RM22 yang dikatakan terhutang oleh JD daripada garnishee kelima. Dalam hal ini, tidak ada asas untuk majistret memberikan perintah garnishee secara mutlak setakat jumlah tersebut sebanyak RM31,330.54 dan RM22 (perenggan 19).

(5) Berkenaan dengan pendapat bahawa ia adalah menjadi kewajipan JD untuk menunjukkan bahawa wang dalam akaun Legasi Bumiputera Enterprise adalah milik orang lain, ini mengendahkan fakta bahawa JC lah yang mempunyai beban undang-undang untuk meyakinkan mahkamah. bahawa terdapat: (a) hutang yang terhutang kepada penghutang penghakiman daripada garnishee; dan (b) hutang yang 'terkumpul terhutang' kepada penghutang penghakiman daripada garnishee untuk mewajarkan pemberian jumlah wang berkenaan. Jika JC tidak melepaskan beban itu, maka tiada apa yang perlu disangkal oleh JD. Di sini, JD dengan mencabar kewajaran untuk melampirkan akaun Legasi Bumiputera Enterprise, beban adalah pada JC untuk menunjukkan bahawa ia adalah wajar untuk garnish wang dalam akaun itu dengan menunjukkan bahawa ia bertanggungjawab untuk dilampirkan dalam apa jua keadaan. JC gagal melepaskan beban itu (perenggan 28).

(6) Oleh itu, mahkamah telah memerintahkan bahawa: (a) keputusan mahkamah majistret dalam memberikan perintah garnishee secara mutlak berkenaan dengan jumlah tersebut sebanyak RM31,330.54 dan RM22 telah diketepikan; (b) JC hendaklah memulangkan jumlah tersebut sebanyak RM31,330.54 dan RM22 masing-masing kepada garnishee kedua dan kelima dalam tempoh 14 hari dari perintah ini; (c) garnishee kedua dan kelima perlu memasukkan semula jumlah tersebut sebanyak RM31,330.54 dan RM22 dalam akaun yang mana jumlah tersebut telah dibayar dalam tempoh tujuh hari dari penerimaan jumlah tersebut; (d) JC membayar kos rayuan ini kepada JD tertakluk kepada alokatur; dan (e) pihak-pihak bebas untuk memohon bagi tujuan melaksanakan perintah ini (perenggan 31).]

**Cases referred to**

*Bank Kerjasama Rakyat (M) Bhd v Koperasi Serbaguna Iman Malaysia Bhd (Maybank Islamic Bhd & Ors, garnishees)* [2023] MLJU 83; [2023] 2 CLJ 966, HC (distd)

*RT Telecom Sdn Bhd v Telefleet Trading Group Sdn Bhd* [2019] MLJU 1888; [2019] CLJU 2093; [2019] 1 LNS 2093, HC (refd)

*Tai Kwong Goldsmiths & Jewellers (under receivership) v Yap Kooi Hee & Ors* [1995] 1 MLJ 1; [1994] 4 CLJ 959, SC (refd)

*Tesco Stores (M) Sdn Bhd v Ananda Kumar a/l Krishnan* [2018] 6 MLJ 261; [2017] 5 CLJ 315, CA (refd)

*Tiong Hoo Teck v Wong Ho Enterprise Sdn Bhd & Ors (No 1)* [2014] 4 MLJ 398; [2014] CLJU 272; [2014] 1 LNS 272, CA (refd)

**Legislation referred to**

Rules of Court 2012 O 49 rr 1, 4, O 92 r 4 Forms 98, 99, 100, First Schedule

*Pg Amli Noraufe Pg Nohin (Nohin & Partners) for the appellant.*
*Noor Ilienna Rahayu Ibrahim (Ibrahim & Chang) for the respondent and fifth garnishee.*
*Chan Shing Loo (Yap & Chin) for the second garnishee.*

**Celestina Stuel Galid J:**

INTRODUCTION

**[1]** The present appeal is by the judgment debtor ('JD') against the decision of the magistrates' court in granting the garnishee order absolute dated 29 September 2023, wherein the second garnishee, Maybank Islamic Bhd, was ordered to pay to the judgment creditor ('JC') the sums of RM8,635.97 and RM31,330.54 and the fifth garnishee, Ambank Islamic Bhd, the sum of RM22.

THE PROCEEDINGS IN THE COURT BELOW

**[2]** The JC had earlier on 8 March 2023, inter alia, obtained a judgment against the JD before the magistrates' court in the sum of RM62,248.25 and interest thereon.

**[3]** The JC thereafter applied for and obtained a garnishee order to show cause dated 21 June 2023 for the purpose of executing the said judgment.

THIS COURT'S DECISION

**[4]** It is pertinent to first consider the applicable statutory provision that is O 49 r 1 of the Rules of Court 2012 ('the ROC 2012'). It provides that:

> (1) Where a person (who is referred to as 'the judgment creditor' in this Order) has obtained a judgment or order for the payment of money by some other person (who is referred to as 'the judgment debtor' in this Order), not being a judgment or order for the payment of money into Court, and any other person within the jurisdiction (who is referred to as 'the garnishee' in this Order), is indebted to the judgment debtor, the Court may, subject to the provisions of this Order and of any written law, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the garnishee, or so much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.

**[5]** The importance of establishing that the garnishee is indebted to the judgment debtor is illustrated in the Court of Appeal case of *Tiong Hoo Teck v Wong Ho Enterprise Sdn Bhd & Ors (No 1)* [2014] 4 MLJ 398; [2014] CLJU 272; [2014] 1 LNS 272. There, the judgment creditor merely averred in his affidavit in support the following:

A 4 To the best of my information and belief that the second and third defendants ('the said garnishees') are indebted to the said judgment debtor based on the financial statement filed by the first defendant with Companies Commission for the period end 31 October 2008, the second and third defendants herein are owing to the said judgment debtor. Pages 9-10, 20-21 of the said financial statement report B are now produced and exhibited herewith marked P2.

**[6]** The senior assistant registrar in that case allowed the application but on appeal to the High Court, the garnishee order was set aside on the grounds that the garnishee order was not precise enough for any debts due or accruing due C to the garnishees because the sums or amount due from them were not set out nor ascertained in the order. The High Court referred to Forms 98 , 99 and 100, which are the garnishee order to show cause, affidavit in support of garnishee order and garnishee order, respectively and held that these forms or documents require the amount due and owing from the garnishee to the debtor D to be stated therein. The High Court held that this was so that the amount to be garnished or attached can be ascertained. However, the High Court found that the judgment creditor did not comply with these. The decision of the High Court was affirmed by the Court of Appeal.

E (Also see *RT Telecom Sdn Bhd v Telefleet Trading Group Sdn Bhd* [2019] MLJU 1888; [2019] CLJU 2093; [2019] 1 LNS 2093.)

**[7]** Much like the judgment creditor in *Tiong Hoo Teck*, the JC in the present F case merely stated the following in his affidavit in support of the application:

7. To the best of my information and belief, the JD maintains an account or accounts with the abovenamed Garnishee which is/are within the jurisdiction of this Court.

G **[8]** In addition, both the second and fifth garnishees neither opposed nor took part in the proceedings. The record of appeal does not include any affidavits filed by the second and fifth garnishees.

H **[9]** The question for this court is what was the evidence before the magistrates' court which showed that the second and fifth garnishees were in fact indebted to the JD as required under O 49 r 1 of the ROC 2012?

**[10]** It is unfortunate that the learned magistrate did not appear to have this I provision in mind when he decided as he did. This was apparent as there was nothing in his grounds of judgment, where this fundamental issue was discussed.

**[11]** It is true that under O 49 r 4 of the ROC 2012, if the garnishee does not

attend or does not dispute the debt due or claimed to be due from him to the judgment debtor, the court may, subject to r 7, make an order absolute against the garnishee. However, this does not relieve the court from first determining whether there is a debt due to the judgment debtor from the garnishee under r 1 — see *Tiong Hoo Teck* and *RT Telecom Sdn Bhd v Telefleet Trading Group Sdn Bhd*. This is especially so in the present case when the JC did not even provide the grounds of his information and belief of the matters he averred as reproduced in para [7] above contrary to the requirement in Form 98 in the First Schedule of the ROC 2012 .

**[12]** It was the JD, who in her affidavit in opposition, disclosed that the second garnishee had written to her to inform that her savings accounts No 60037025494 in the sum of RM8,635.97 had been frozen — see exh 'NA1'. Indeed, the letter from the second garnishee dated 4 July 2023 does indicate that they have frozen the said account in compliance with the garnishee order to show cause. However, it should have immediately raised a red flag to the learned magistrate that there was no mention by the second garnishee in the said letter about the sum of RM31,330.54. To me this suggests that the second garnishee was not even sure that they were indebted to the JD in the said sum. Had it been otherwise, the second garnishee would have also informed the JD that the particular account with the said sum of RM31,330.54 was also frozen or tagged, as it would appear that the second garnishee felt that they had a duty to inform the JD of the freezing of her savings account.

**[13]** As it is, the only evidence on this sum of RM31,330.54 was produced by the JD herself by exhibiting the bank statement of Legasi Bumiputera Enterprise, (exh 'NA4(a)-(b)'). The JD said that this was not her personal bank account but a business account under the name of Legasi Bumiputera Enterprise which is not the same as the business she was trading in where she was sued by the JC earlier, namely Ayuni Optometri & Ayuni Housing Group.

**[14]** To this, the JC, in his affidavit in reply, averred that the JD was named and sued in her personal capacity since the full name and identity card of the JD was stated as the defendant/JD and that as long as the account was under the JD's own name, it would be subject to the garnishee proceedings.

**[15]** With respect, the JC's said averments are without any basis as the JD was sued not in her personal capacity but as the proprietor of the trading business known as Ayuni Optometri & Ayuni Housing Group. In addition, as noted earlier, the JC did not provide the grounds of his information and belief of the matters he averred in para 7 of his affidavit in support. Thus, the JC could not have any basis to premise his averments on.

**[16]** In any event, with respect, it was not for the JC to rationalise as such as given the challenge by the JD, it was for the second garnishee to explain in particular as to why the account in the name of Legasi Bumiputera Enterprise was liable to be attached or to say it in another way, why the second garnishee was said to be indebted to the JD in relation to that particular account. Even if the second and fifth garnishees did not take part in the proceedings, it would have been incumbent upon the JC to obtain the necessary information from them on this matter, given the dispute by the JD on this issue. This was not done.

**[17]** In the commentary on O 49 r 1, it is stated in the *Singapore Civil Procedure* (Vol 1, 2020 Ed, 49/1/52 as follows:

> (22) Banking account — A provisional order does not attach the balance of an account at a bank unless it correctly sets forth the name of the account as it stands in the books of the bank. Where the debtor has and operates an account in a name other than his own, that name must be inserted in the provisional order (see *Koch v Mineral Ore Syndicate* (1910) 54 SJ 600).

**[18]** Here, neither the garnishee order to show cause nor the garnishee order absolute made any reference to Legasi Bumiputera Enterprise at all.

**[19]** In my view, there being no evidence before the magistrates' court on the identity of the account holder in which the said sum of RM31,330.54 was kept, the requirement under O 49 r 1 of the ROC 2012 in as far as the said sum is concerned, was not fulfilled. It is also the same as regards the said sum of RM22 purportedly due to the JD from the fifth garnishee. This being the case, there was no basis for the learned magistrate to grant the garnishee order absolute in as far as the said sums of RM31,330.54 and RM22 are concerned.

**[20]** This would have been the end of the matter had it not been the fact that the JD did not file a stay of execution against the garnishee order absolute and that the second and fifth garnishees have since paid the said sums to the JC pursuant to the said order.

**[21]** Learned counsel for the JC relied on the case of *Bank Kerjasama Rakyat (M) Bhd v Koperasi Serbaguna Iman Malaysia Bhd (Maybank Islamic Bhd & Ors, garnishees)* [2023] MLJU 83; [2023] 2 CLJ 966 to contend that that was practically the end of the matter and that there was no avenue to have the said sums returned.

**[22]** In that case, the judgment creditor was successful in the appeals to the judge in chambers against the decision of the Senior Assistant Registrar to decline granting an order absolute against the garnishee banks in question.

Before the decision of the appeal in judge in chambers, the funds in the bank accounts which were previously attached by the *order nisi* were taken out by the judgment debtor. The judgment creditor then applied to the court to garnish the funds taken out by the judgment debtor. The main issue before the court was whether these funds could still be garnished under O 92 r 4 of the Rules of Court 2012.

**[23]** Justice Atan Mustaffa held as follows:

(1) When the SAR declined to grant the order absolute, it meant that the court had lifted the freezing order previously obtained through the granting of the *order nisi* and the garnishees, Maybank and Ambank, were no longer required to hold the JD's funds in the respective bank accounts. The JD would be able to access and use any funds being held as a result of the earlier *order nisi*. When the transferred amounts were first transferred, the JC did not file a stay application, the general position was that the JD was entitled to regard that the impugned transfers were within the JD's rights as accorded by the law and the court had no power to prevent further transfers of the monies in the JD's accounts without a stay of the decision.

(2) The JC here was imploring upon the court to grant a relief, by making the retransfer order, to do something which was not provided by the Legislature. Given that the Legislature has not provided for such a relief to be granted, the court will be circumspect in using its inherent power to prevent the injustice and abuse of process as the JC so claimed. The backdrop of the episode of the impugned transfers was that the JC, after the SAR's decision declining to make an order absolute against Maybank and Ambank, did not apply or request for any stay of proceedings in any form. The JC was aware that once the court declined to grant the order absolute, the freezing order on the monies in the JD's accounts was lifted and the JD would be able to access and use any funds that were being held as a result of the earlier *order nisi*. This failure to apply for a stay of proceedings, which would have been considered by the court and would be allowed if there were special circumstances, was an oversight by the JC. The law provides for this relief (the stay pending appeal) and the JD had failed to avail itself of it. The JC's application for the retransfer order under the inherent powers of the court was also a form of abuse because the JC itself had omitted to apply for the stay and only after it was discovered that the funds that subsequently flowed into the JD's account had been taken out that it applied for the retransfer order to rectify this omission. Under these circumstances, this court could not exercise its inherent power to make the retransfer order as prayed for by the JC.

**[24]** Both learned counsels for the JC and the JD were not able to provide this court additional authorities on this issue, however, my own research led me to the Supreme Court case of *Tai Kwong Goldsmiths & Jewellers (under receivership) v Yap Kooi Hee & Ors* [1995] 1 MLJ 1; [1994] 4 CLJ 959. In that

case, the appellant, which was a partnership, was dissolved and a receiver had been appointed by the court. After the appointment of the receiver, three depositors of the partnership obtained garnishee orders against the moneys in the hands of the receiver but without leave of the court to take out the garnishee proceedings. The court allowed the receiver's appeal, inter alia, holding as follows:

> In our judgment, each of those three garnishee orders having been obtained without leave were improperly obtained and in proceeding to obtain them and in obtaining them, the appellants were in effect in contempt of the court that appointed the receiver. The garnishee orders and each of them are of no effect. *If there had been any amounts paid to the garnishors pursuant to the garnishee order such amounts should be forthwith repaid to the receiver.* (Emphasis added.)

**[25]** Learned counsel for the JC distinguished this case on the grounds that there, the issue went to the 'root of the proceedings', namely that the garnishors failed to obtain leave beforehand. However, in the present case, it was argued that the JD was, at all material times present during the whole proceedings. In addition, learned counsel for the JC contended that the JD in her affidavit in opposition herself admitted that the account under the name Legasi Bumiputera Enterprise belonged to her. Thus, according to learned counsel further, the duty shifted to her to show that the money in the said account belonged to someone else and that she had no control over it.

**[26]** With respect, I cannot agree with learned counsel for the JC on both points. First of all, while it is true that in *Tai Kwong Goldsmiths & Jewellers,* the determinative factor was that there was no leave obtained by the garnishors, I do not see why it should make a difference, especially where such as in the present case, the garnishee order absolute on the sums of RM31,330.54 and RM22 was, respectfully, demonstratively wrongly made. What is important is that the Supreme Court did not find it a hindrance to order that the garnished monies which had been paid be repaid.

**[27]** On this score, the case of *Bank Kerjasama Rakyat (M) Bhd* is distinguishable as there, the issue was whether the court could still grant a garnishing order against the funds which the judgment debtor had already taken out. At the material time, there was no restriction for the judgment debtor to do so as the court had lifted the freezing order previously obtained through the granting of the *order nisi.* Thus, it was understandable that the High Court was of the view that there was no basis to grant the re-transfer relief sought for by the judgment creditor. In the present case, it is a matter of righting a wrong which the court is well-clothed with inherent jurisdiction to do so.

**[28]** As regards the contention that it was the duty of the JD to show that the

money in the Legasi Bumiputera Enterprise account belonged to someone else, with respect, this ignores the fact that it is the JC who has the legal burden to persuade the court that there is: (a) a debt due to the judgment debtor from the garnishee; and (b) a debt which is 'accruing due' to the judgment debtor from the garnishee to justify the garnishment of the sum of money in question — see *Tesco Stores (M) Sdn Bhd v Ananda Kumar a/l Krishnan* [2018] 6 MLJ 261; [2017] 5 CLJ 315. If the JC has not discharged that burden, then there is nothing for the JD to rebut. Here, the JD having challenged the propriety of attaching the Legasi Bumiputera Enterprise account, the burden was on the JC to show that it was justifiable to garnish the money in that account by showing that it was liable to be attached in any event. The JC failed to discharge that burden.

CONCLUSION

**[29]** I am aware that having paid the monies to the judgment creditor, a garnishee is in law discharged under O 49 r 8 of the ROC 2012 which provides that:

> Any payment made by a garnishee in compliance with an order absolute under this Order, and any execution levied against him in pursuance of such an order, shall be a valid discharge of his liability to the judgment debtor to the extent of the amount paid or levied notwithstanding that the garnishee proceedings are subsequently set aside or the judgment or order from which they arose reversed.

**[30]** However, given the circumstances of this case, namely that there is no evidence to show that the said sums of RM31,330.54 and RM22 are monies which are due from the second and fifth garnishees respectively to the JD, I am of the view that the appropriate order can only be that the said sums be returned to the respective accounts in the second and fifth garnishees from which the monies were paid out to the JC.

**[31]** Accordingly, I hereby allow the appeal in part and order as follows:

(a) that the decision of the magistrates' court in granting the garnishee order absolute in respect of the said sums of RM31,330.54 and RM22 is set aside;

(b) that the JC is to return the said sums of RM31,330.54 and RM22 to the second and fifth garnishees respectively within 14 days of this order;

(c) that the second and fifth garnishees are to reinstate the said sums of RM31,330.54 and RM22 in the accounts from which the said sums were paid out within seven days from their receipts of the said sums;

(d) that the JC pays the JD costs of this appeal subject to allocatur; and

A (e) the parties are at liberty to apply for the purpose of giving effect of these orders.

*Appeal allowed in part.*

B Reported by K Selvaraju

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